IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C.No.1542/2003

H.C.Bhasin & Ors. .....Petitioners
! through: Ms. Rebecca M.John, Advocate with
Mr. V.B.Saharya, Advocate

VERSUS

$ R.O.C .....Respondent
^ through: Ms. Maneesha Dhir, Advocate

CRL.M.C.No.1546/2003

H.C.Bhasin & Ors. .....Petitioners
! through: Ms. Rebecca M.John, Advocate with
Mr. V.B.Saharya, Advocate

VERSUS

$ R.O.C .....Respondent
^ through: Ms. Maneesha Dhir, Advocate

CRL.M.C.No.1548/2003

Shardul S.Shroff .....Petitioners
! through: Mr. Sushil Bajaj, Advocate with
Mr. Vijay Arora, Advocate

VERSUS

$ R.O.C .....Respondent
^ through: Ms. Maneesha Dhir, Advocate

CRL.M.C.No.1551/2003

Shardul S.Shroff .....Petitioners
! through: Mr. Sushil Bajaj, Advocate with
Mr. Vijay Arora, Advocate

VERSUS

$ R.O.C .....Respondent
^ through: Ms. Maneesha Dhir, Advocate

% **D**ATE OF DECISION: 22-08-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

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1. Two complaints were filed on 19.2.2002 against the petitioners. The complaints were for an alleged offence under Section 62 and 63 of the Companies Act,1956.

2. One complaint related to stated defaults committed by the petitioners, disclosed to be the directors of M/s. H.B.Stock Holding Ltd. when annual return was filed on 28.12.1992. The second complaint related to the alleged defaults when annual return was filed on 21.11.1994.

3. It is not in dispute between the parties that the offence, if proved to have been committed, would be punishable with imprisonment for a term which may extend to two years. Thus, limitation for filing the complaints would be three years under Section 468 Cr.P.C. 1973. It is also the common case of learned counsel for the parties that in the facts and circumstances of the instant case limitation would

commence under Section 469 (1) (b) of the Code of Criminal Procedure 1973.

4. The question which needs to be considered is, on what date limitation commenced.

5. That takes me to the pleadings in the complaint. It is stated in the complaint that inspection of the books of accounts and records of the company was ordered on 26.5.1998. The inspection was completed in August 1998 and report was submitted to the Registrar of Companies.

6. If that be so, actionable knowledge would be attributable to the Registrar of Companies, the person aggrieved, as held in the report published as 2000 Company Cases (Vol.101) 271 *Registrar of Companies Vs. Rajshree Sugar & Chemicals Ltd.* when the report of inspection listing the alleged deficiencies was submitted to the Registrar of Companies. Thus, the complaints ought to have been filed by August 2001. The complaints have admittedly been filed much thereafter. As noted above, complaints have been filed on 19.2.2002.

7. It was sought to be urged that the Registrar of Companies is not supposed to rush through the deficiencies notified to him. He needs time to consider the nature of

deficiencies. Further, it is advisable to put the offending party to prior notice and receive a reply, for if a satisfactory reply is received, Registrar of Companies may not even file a complaint. It is thus urged that time consumed for said purpose had to be excluded while computing limitation. Learned counsel for the respondent submitted that such a view would be beneficial to the accused for otherwise the Registrar of Companies would be compelled to rush through with the matter.

8. The arguments seems attractive at the first blush. But it has no legs to stand.

9. Legislature does not intend parties to immediately rush to court when cause of action accrued. A sufficient period is given within which matter could be sorted out or further investigations could be completed. This is the period prescribing limitation.

10. In relation to criminal offence, limitation is prescribed under Sub Section 2 of Section 468 of the Cr.P.C. 1973. In relation to offence punishable with imprisonment for a term exceeding 1 year but not exceeding 3 years, the limitation is 3 years. The 3 years' period is intended to be the cushion period within which the complainant must decide and

take recourse to the course which the complainant intends to charter.

11. Any other view would mean that a court would have to read into the statute that the time spent by the complainant to form a reasonable opinion whether or not to proceed under the penal law has to be excluded. I am afraid, the statute does not provide so.

12. Learned counsel for the respondent has relied upon a decision dated 25.1.2007 in Crl. M (M) No.3241/2002.

13. I have perused the decision. On the facts of the said case, learned Single Judge in para 11 observed that issue of limitation which was arising was a mixed question of law and fact.

14. Instant case is not one where the question of limitation arises as a mixed question of law and fact.

15. I thus hold that the complaints are barred by the limitation.

16. The petitions are allowed.

17. Order taking cognizance of the complaints as also the summoning order are quashed.

18. No costs.

August 22, 2007 PRADEEP NANDRAJOG, J.
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